

HOUSE BILL No. 1126

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-23-2-1.

Synopsis: Wrongful death or injury of a child. Specifies that the law concerning the wrongful death or injury of a child: (1) does not apply to a legally performed abortion; and (2) applies to a fetus that has attained viability. Provides that the law concerning the wrongful death or injury of a child does not affect or supersede any other right, remedy, or defense provided by any other law.

Effective: July 1, 2008.

Welch, Van Haaften, Koch, Turner

January 8, 2008, read first time and referred to Committee on Public Policy.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

HOUSE BILL No. 1126

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-23-2-1, AS AMENDED BY P.L.2-2007,
2 SECTION 373, AND AS AMENDED BY P.L.234-2007, SECTION
3 169, IS CORRECTED AND AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2008]: Sec. 1. **(a) This section does not apply**
5 **to an abortion performed in compliance with:**

6 **(1) IC 16-34; or**

7 **(2) IC 35-1-58.5 (before its repeal).**

8 ~~(a)~~ **(b)** As used in this section, "child" means an unmarried
9 individual without dependents who is:

10 (1) less than twenty (20) years of age; or

11 (2) less than twenty-three (23) years of age and is enrolled in ~~an~~
12 ~~a postsecondary educational institution, of higher education or in~~
13 ~~a vocational career and technical education school or program~~
14 ~~that is not a postsecondary educational program.~~

15 **The term includes a fetus that has attained viability (as defined in**
16 **IC 16-18-2-365).**

17 ~~(b)~~ **(c)** An action may be maintained under this section against the

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person whose wrongful act or omission caused the injury or death of a child. The action may be maintained by:

- (1) the father and mother jointly, or either of them by naming the other parent as a codefendant to answer as to his or her interest;
- (2) in case of divorce or dissolution of marriage, the person to whom custody of the child was awarded; and
- (3) a guardian, for the injury or death of a protected person.

~~(c)~~ **(d)** In case of death of the person to whom custody of a child was awarded, a personal representative shall be appointed to maintain the action for the injury or death of the child.

~~(d)~~ **(e)** In an action brought by a guardian for an injury to a protected person, the damages inure to the benefit of the protected person.

~~(e)~~ **(f)** In an action to recover for the death of a child, the plaintiff may recover damages:

- (1) for the loss of the child's services;
- (2) for the loss of the child's love and companionship; and
- (3) to pay the expenses of:
 - (A) health care and hospitalization necessitated by the wrongful act or omission that caused the child's death;
 - (B) the child's funeral and burial;
 - (C) the reasonable expense of psychiatric and psychological counseling incurred by a surviving parent or minor sibling of the child that is required because of the death of the child;
 - (D) uninsured debts of the child, including debts for which a parent is obligated on behalf of the child; and
 - (E) the administration of the child's estate, including reasonable attorney's fees.

~~(f)~~ **(g)** Damages may be awarded under this section only with respect to the period of time from the death of the child until:

- (1) the date that the child would have reached:
 - (A) twenty (20) years of age; or
 - (B) twenty-three (23) years of age, if the child was enrolled in *an a postsecondary educational institution of higher education* or in a *vocational career and technical education* school or program *that is not a postsecondary educational program*; or
- (2) the date of the child's last surviving parent's death;

whichever first occurs.

~~(g)~~ **(h)** Damages may be awarded under subsection ~~(e)(2)~~ **(f)(2)** only with respect to the period of time from the death of the child until the date of the child's last surviving parent's death.

~~(h)~~ **(i)** Damages awarded under subsection ~~(e)(1)~~, ~~(e)(2)~~, ~~(e)(3)(C)~~, **(f)(1)**, **(f)(2)**, **(f)(3)(C)**, and ~~(e)(3)(D)~~ **(f)(3)(D)** inure to the benefit of:

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1 (1) the father and mother jointly if both parents had custody of the
2 child;

3 (2) the custodial parent, or custodial grandparent, and the
4 noncustodial parent of the deceased child as apportioned by the
5 court according to their respective losses; or

6 (3) a custodial grandparent of the child if the child was not
7 survived by a parent entitled to benefit under this section.

8 However, a parent or grandparent who abandoned a deceased child
9 while the child was alive is not entitled to any recovery under this
10 chapter.

11 **(j) This section does not affect or supersede any other right,**
12 **remedy, or defense provided by any other law.**

13 **SECTION 2. [EFFECTIVE JULY 1, 2008] IC 34-23-2-1, as**
14 **amended by this act, applies only to a cause of action that accrues**
15 **after June 30, 2008.**

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